

§ 10.74

record, but no exception to a ruling is necessary to preserve the rights of the parties.

(g) *Effective/applicability date.* This section is applicable on September 26, 2007.

[T.D. 9011, 67 FR 48765, July 26, 2002. Redesignated and amended by T.D. 9359, 72 FR 54552, 54554, Sept. 26, 2007]

§ 10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Public Law 82-137)(65 Stat. 290)(31 U.S.C. 483a).

§ 10.75 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

§ 10.76 Decision of Administrative Law Judge.

(a) *In general*—(1) *Hearings.* Within 180 days after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge should enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(2) *Summary adjudication.* In the event that a motion for summary adjudication is filed, the Administrative Law

31 CFR Subtitle A (7-1-15 Edition)

Judge should rule on the motion for summary adjudication within 60 days after the party in opposition files a written response, or if no written response is filed, within 90 days after the motion for summary adjudication is filed. A decision shall thereafter be rendered if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law. The decision must include a statement of conclusions, as well as the reasons or basis for making such conclusions, and an order of censure, suspension, disbarment, monetary penalty, disqualification, or dismissal of the complaint.

(3) *Returns and return information.* In the decision, the Administrative Law Judge should use the code assigned to third party taxpayers (described in § 10.72(d)).

(b) *Standard of proof.* If the sanction is censure or a suspension of less than six months' duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of the evidence in the record. If the sanction is a monetary penalty, disbarment or a suspension of six months or longer duration, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record.

(c) *Copy of decision.* The Administrative Law Judge will provide the decision to the Internal Revenue Service's authorized representative, and a copy of the decision to the respondent or the respondent's authorized representative.

(d) *When final.* In the absence of an appeal to the Secretary of the Treasury or delegate, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

Office of the Secretary of the Treasury

§ 10.79

(e) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

[T.D. 9359, 72 FR 54554, Sept. 26, 2007, as amended by T.D. 9527, 76 FR 32310, June 3, 2011]

§ 10.77 Appeal of decision of Administrative Law Judge.

(a) *Appeal.* Any party to the proceeding under this subpart D may appeal the decision of the Administrative Law Judge by filing a notice of appeal with the Secretary of the Treasury, or delegate deciding appeals. The notice of appeal must include a brief that states exceptions to the decision of Administrative Law Judge and supporting reasons for such exceptions.

(b) *Time and place for filing of appeal.* The notice of appeal and brief must be filed, in duplicate, with the Secretary of the Treasury, or delegate deciding appeals, at an address for appeals that is identified to the parties with the decision of the Administrative Law Judge. The notice of appeal and brief must be filed within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The appealing party must serve a copy of the notice of appeal and the brief to any non-appealing party or, if the party is represented, the non-appealing party's representative.

(c) *Response.* Within 30 days of receiving the copy of the appellant's brief, the other party may file a response brief with the Secretary of the Treasury, or delegate deciding appeals, using the address identified for appeals. A copy of the response brief must be served at the same time on the opposing party or, if the party is represented, the opposing party's representative.

(d) *No other briefs, responses or motions as of right.* Other than the appeal brief and response brief, the parties are not permitted to file any other briefs, responses or motions, except on a grant of leave to do so after a motion demonstrating sufficient cause, or unless otherwise ordered by the Secretary of the Treasury, or delegate deciding appeals.

(e) *Additional time for briefs and responses.* Notwithstanding the time for filing briefs and responses provided in

paragraphs (b) and (c) of this section, the Secretary of the Treasury, or delegate deciding appeals, may, for good cause, authorize additional time for filing briefs and responses upon a motion of a party or upon the initiative of the Secretary of the Treasury, or delegate deciding appeals.

(f) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

[T.D. 9527, 76 FR 32310, June 3, 2011]

§ 10.78 Decision on review.

(a) *Decision on review.* On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal.

(b) *Standard of review.* The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence.

(c) *Copy of decision on review.* The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the authorized representative of the Internal Revenue Service and the respondent or the respondent's authorized representative.

(d) *Effective/applicability date.* This section is applicable beginning August 2, 2011.

[T.D. 9359, 72 FR 54555, Sept. 26, 2007, as amended by T.D. 9527, 76 FR 32310, June 3, 2011]

§ 10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been